RECORD, CASE NO.

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1888.

TERM NO., 1888, 277

THE BELMONT PLANTING AND MANUFACTURING COMPANY, APPELLANT,

vs.

WILLIAM L. SCOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED FEBRUARY 1, 1888.



RECORD, CASE No. 15,249.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No, 1279.

THE BELMONT PLANTING AND MANUFACTURING COMPANY, APPELLANT,

vs.

WILLIAM L. SCOTT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 3, 1893.

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, at New Orleans.

WILLIAM L. SCOTT, Appellee,
versus
THE BELMONT PLANTING & MANUFACTURING COMPANY, Appellant. } No. 12160.

Henry P. Dart, Esq., attorney for appellee.
Mess. Farrar, Jonas & Kruttschnitt, attorneys for appellant.

Appeal from the circuit court of the United States, eastern district of Louisiana, to the Supreme Court of the United States of America, at the city of Washington, D. C., returnable on the first day of February, A. D. 1893.

Transcript of Appeal.

1 Circuit Court of the United States, Eastern District of Louisiana.

WILLIAM L. SCOTT
vs.
BELMONT PLANTING & M'F'G COMPANY. } No. 12160.

Petition for Executory Process. Filed December 24, 1892.

United States Circuit Court, Eastern District of Louisiana, Holding Sessions at New Orleans, Louisiana.

To the honorable the judges of the United States circuit court for the eastern district of Louisiana:

The petition of William L. Scott, a resident and a citizen of New York city, State of New York—

Respectfully shows that the Belmont Planting and Manufacturing Co., a corporation organized under the laws of Louisiana, duly incorporated by act, before Hewes T. Gurley, notary public, on December 9th, 1890, domiciled in the parish of St. James, State of Louisiana, is justly and truly indebted unto your petitioner in the full sum of two thousand eight hundred dollars, for this, to wit:

That petitioner is the owner and holder for value and before maturity of eight certain promissory notes, six thereof for the sum of fourteen hundred dollars each and two thereof for the sum of fifteen hundred and eighty-eight $\frac{47}{100}$ dollars each, all drawn in New Orleans on January 1st, 1892, by the Belmont Planting and Manufacturing Co., Jos. L. Le Bourgeois, pres't, to the order of itself
2 and by it endorsed, and payable respectively two on the 1st day of December, 1892; two on the 1st of December, 1893, and two on 1st of December, 1894, and two on the 1st of December,

1895, each stipulating to bear eight per cent. interest from date until paid, each of said notes being duly paraphed *Ne varietur* to identify with an act of sale and mortgage before Hewes T. Gurley, notary public, May 5th, 1892; all of which will more fully appear from said notes annexed hereto as part hereof.

Petitioner shows that the hereinabove-described notes were issued by said Belmont Planting and Manufacturing Co. as part of the purchase price of the following-described real property, viz:

A certain plantation known as the Belmont plantation, situated in the parish of St. James, in the State of Louisiana, on the left bank of the Mississippi river, at about fifty-seven miles above the city of New Orleans, measuring twenty arpents front on said river by eighty arpents in depth, opening in the rear, more or less, together with a second and third concessions and all the back lands attached to the Belmont plantation and forming part thereof and having an acreage of seventeen hundred and sixty superficial acres, said plantation being bounded above by the plantation of Mrs. Welham and below by that formerly belonging to S. T. Wallace, Jr., and now to McCan and Ross.

That in order to secure the prompt and punctual payment of said notes, with interest at maturity, the said Belmont Planting and Manufacturing Co. did by said act of sale and mortgage specially mortgage and hypothecate the said hereinabove-described real property unto any holder of said notes, and it did further bind itself, in case it became necessary to institute suits to collect the same by reason of failure to pay said notes, to pay the fees of the attorney employed to collect the same, which said fees were fixed at
3 five per cent. on the whole amount thus sued on; all of which facts will more fully appear from a duly certified copy of said act of sale and mortgage hereto annexed as part hereof.

That in said act of mortgage the said Belmont Planting and Manufacturing Co. consented and agreed that the hereinabove-described notes were to be paid by preference and have priority over the other notes described in said act of sale and mortgage.

That the said act contains the pact of non-alienation, imports a confession of judgment, and authorizes proceedings *via executiva* and without appraisement.

Wherefore petitioner prays that the said Belmont Planting and Manufacturing Co., through its proper officer, be notified in the manner pointed out by law, and thereafter that a writ of seizure and sale do issue to the United States marshal, commanding him to seize and take into his possession the property hereinabove described, and the same to advertise and sell, without appraisement, for cash to pay and satisfy petitioner's claim of two thousand eight hundred dollars, with eight per cent. interest thereon from January 1st, 1892, and costs, with five per cent. attorney's fees on the whole amount thus sued on, and with recognition of petitioner's lien and privilege and right of preference over the other notes described in said act of mortgage hereinabove referred to, the same being the amount of the first of the series of the notes hereinabove described which are now past due, the purchaser to assume the pay-

ment of the remainder of the series of said notes, viz., two for the sum of fourteen hundred dollars each, due December 1st, 1893; two for fourteen hundred dollars each, due December 1st, 1894, and two for the sum of fifteen hundred and eighty-eight $\frac{47}{100}$ dollars
4 each, due December 1st, 1895, with the conditions stipulated in said act of sale and mortgage; and petitioner prays for all general and equitable relief.

(Signed) HENRY P. DART, *Att'y.*

Order.

Let executory process issue as herein prayed for and according to law.

(Signed) EDWARD C. BILLINGS, *Judge.*

New Orleans, Dec. 24, 1892.

2 *Notes Filed with Petition December* 24, 1892.

$1,400.00. NEW ORLEANS, *January 1st*, 1892.

On December 1st, 1892, I promise to pay to the order of myself fourteen hundred dollars at the —, for value received, with interest at the rate of eight per cent. per annum after date until paid.

(Signed) BELMONT PLANTING & MANUFACTURING CO.
JOS. L. LE BOURGEOIS, *President.*

Endorsed: Belmont Planting & Manufacturing Co. Jos. L. Le Bourgeois, president. (L. S.)

Written across face in red ink: *Ne varietur.* For identification with act of sale passed before me this 5th day of May, 1892. (Seal.) Hewes T. Gurley, not. pub.

5 $1,400.00. NEW ORLEANS, *January 1st*, 1892.

On December 1st, 1892, I promise to pay to the order of myself fourteen hundred dollars at the —, for value received, with interest at the rate of eight per cent. per annum after date until paid.

(Signed) BELMONT PLANTING & MANUFACTURING CO.
JOS. L. LE BOURGEOIS, *President.*

[Written across face:] *Ne varietur.* For identification with act of sale passed before me this 5th day of May, 1892. (Seal.) Hewes T. Gurley, notary public.

Endorsed: Belmont Planting & Manufacturing Co. Jos. L. Le Bourgeois, president. (Seal.)

Copy of Act—Sale of Property Le Bourgeois Heirs to the Belmont Planting & M'f'g Co. Filed Dec. 24, 1892.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Sale of property by J. Charles Le Bourgeois *et als.* to The Belmont Planting & Man'f'g Co.

Be it known that on this fifth day of the month of May, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and sixteenth:

Before me, Hewes T. Gurley, a notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared:

6 First. J. Charles Le Bourgeois, a resident of the parish of St. James, in this State, herein appearing both individually and in his own behalf and also as the special agent and attorney-in-fact of Mrs. Adele Le Bourgeois, wife of Robert W. Chapin, and of the said Robert W. Chapin, for the purpose of authorizing and assisting his said wife, residing in the city and State of New York, and also as the special agent and attorney-in-fact of Henry B. Chapin, residing in the city of Boston, State of Massachusetts, as per power of attorney under private signature acknowledged by said Mrs. Adele Le Bourgeois Chapin and by said Robert W. Chapin before Charles Edgar Mills, a commissioner for the State of Louisiana in the city and State of New York, and by said Henry B. Chapin before Charles Hall Adams, a commissioner for the State of Louisiana in the State of Massachusetts, residing in the city of Boston, in said State; which said power of attorney is annexed to this act as part of the same.

Second. Louis Le Bourgeois, a resident of the parish of St. James, in this State.

Third. Miss Elizabeth Charless Le Bourgeois, a resident of the parish of St. James, in this State, unmarried, a minor over the age of eighteen years and relieved of all the disabilities which attach to minors by judgment of emancipation rendered by the honorable the twenty-second judicial district court in and for the parish of St. James in the matter numbered 1556 of its docket, said judgment being of date April 27th, 1892, and a duly certified copy of the same being annexed to this act as part of the same.

And the said appearers did thereupon declare that they do by these presents grant, bargain, sell, convey, transfer, assign, set over,

7 and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which they have or may have against all preceding owners and vendors unto the Belmont Planting and Manu-

facturing Company, a corporation organized under the laws of the State of Louisiana, domiciled in the parish of St. James, and herein represented by Joseph L. Le Bourgeois, its president, hereto duly authorized by resolution of the board of directors of said corporation, passed at a meeting of said board in the parish of St. James on the 5th day of May, 1892, of which a duly certified copy is annexed to and made part of this act, here present and accepting, purchasing for said corporation, its successors and assigns, and acknowledging due delivery and possession thereof, the following-described property, to wit:

"A certain plantation known as the 'Belmont plantation,' situated in the parish of St. James, in the State of Louisiana, on the left bank of the Mississippi river, at about fifty-seven miles above the city of New Orleans, measuring twenty arpents front on said river by eighty arpents in depth, opening in the rear, more or less, together with a second and third concessions and all the back lands attached to the Belmont plantation and forming part thereof and having an acreage of seventeen hundred and sixty (1,760) superficial acres, said plantation being bounded above by the plantation of Mrs. Welham and below by that formerly belonging to S. T. Wallace, Jr., and now to McCan & Ross."

The said property was acquired by the late Mrs. E. C. Le Bourgeois by act of *dation en paiement* from her husband, L. S. Bourgeois, passed before Louis Dugas, late recorder of the parish of St. James, on the 24th day of May, 1879, and which said Mrs. Le Bour-
8 geois died in the parish of St. James on or about the 24th day of July, 1881, leaving her last wills and testaments in olographic forms, which were duly probated in said parish, and under which said last wills and testaments and under the laws of the State of Louisiana the said property did, after the death of said Mrs. Le Bourgeois, descend to and become the property of her children, J. Charles Le Bourgeois, Louis Le Bourgeois, Edward C. Le Bourgeois, Mrs. Adele Le Bourgeois, wife of Robert W. Chapin, William B. Le Bourgeois, George C. Le Bourgeois, and Elizabeth C. Le Bourgeois, in the proportion of one-fourth to the said Louis Le Bourgeois and one-eighth to each of said other persons aforenamed, but subject to a usufruct in favor of her surviving husband, Louis S. Le Bourgeois, during his natural life.

By act under private signature, duly acknowledged before Edwin F. Corey, a commissioner for the State of Louisiana, resident in the city of New York, State of New York, the said Edward C. Le Bourgeois did, on the 21st day of May, 1883, sell his interest in said plantation to said Robert W. Chapin. By agreement under private signature of date September 16th, 1887, by and between said J. Charless Le Bourgeois, Edward C. Le Bourgeois, Mrs. Adele Le Bourgeois, wife of Robert W. Chapin, Robert W. Chapin, William B. Le Bourgeois, Louis S. Le Bourgeois, and George C. Le Bourgeois, the said parties to said agreement declared that whereas the parties thereto, together with the minor, Elizabeth C. Le Bourgeois, were the sole heirs-at-law and legatees of said Mrs. Le Bourgeois; and whereas in the construction of said wills and in the execution of the same various compli-

cated questions of fact and of law arose, that the parties thereto, in order to avoid all unseemly litigation and to amicably adjust and compromise their rights in and to said succession, entered
9 into an agreement whereby the said Louis S. Le Bourgeois waived and renounced any and all usufruct in and to said property, the said Louis Le Bourgeois waived and renounced one-half of the legacy left to him by his said mother, so as to reduce the same to one undivided eighth of said plantation, and the parties to said agreement agreed to a judicial sale of said plantation and to the fixing of their rights in and to the same in the manner and form set forth in said agreement.

By act under private signature of date August 5th, 1891, duly acknowledged before Charles Edgar Mills, a commissioner for the State of Louisiana — and for the city and State of New York, said Robert W. Chapin sold his interest in and to said property to Henry B. Chapin, of the city of Boston, State of Massachusetts.

By act under private signature of date November 18th, 1891, duly acknowledged before Charles Nettleton, a commissioner for the State of Louisiana in and for the city and State of New York, George C. Le Bourgeois sold and conveyed unto Louis Le Bourgeois all his right, title, and interest in and to said plantation.

By act under private signature of date January 31st, 1892, duly acknowledged before Charles Nettleton, a Louisiana commissioner in and for the city and State of New York, William B. Le Bourgeois sold all his interest in said plantation to said Mrs. Adele Le Bourgeois Chapin.

All of which acts, agreements, and documents aforesaid are duly registered in the proper books of the office of the recorder of the parish of St. James, with the exception of the said agreement under private signature of date September 16th, 1887, which the said vendors agree to cause to be registered as soon as they conveniently can.

By all of the acts and conveyances aforesaid the said prop-
10 erty became and is the property of said Louis Le Bourgeois, J. Charless Le Bourgeois, Miss Elizabeth Charless Le Bourgeois, Mrs. Adele Le Bourgeois, wife of Robert W. Chapin, and of Henry B. Chapin in the proportions which will appear from the above conveyances, and of which all parties hereto take full cognizance.

To have and to hold the above-described property unto the said purchaser, its successors and assigns, forever.

This sale is made and accepted for and in consideration of the price and sum of forty-five thousand and fourteen $\frac{56}{100}$ dollars ($45,014.56), which has been paid by said purchaser to said vendors in the manner and form following, to wit:

1st. The said purchaser has furnished to said vendors the eight certain promissory notes of said corporation, six thereof for the sum of fourteen hundred dollars ($1,400.00) each, and two thereof for the sum of fifteen hundred and eighty-eight $\frac{47}{100}$ dollars ($1,588.47) each, the said notes of fourteen hundred dollars ($1,400.00) each being all dated January 1st, 1892, and payable, respectively, two on

the first days of December in each of the years 1892, 1893, & 1894, and said two notes for fifteen hundred and eighty-eight $\frac{47}{100}$ dollars ($1,588.47) each being of like date and both payable December 1st, 1895.

Which said notes stipulated to bear interest at the rate of eight per cent. per annum from date until paid, and after having been paraphed "*Ne varietur*" by me, notary, to be herewith identified have been delivered to the said vendors, who hereby acknowledge the receipt thereof; and, in order to secure the full and punctual payment of said notes at maturity, special mortgage and vendors' lien and privilege are retained and granted as hereinafter set
11 forth; but, in addition thereto, it is hereby specially agreed between the parties hereto that said eight notes shall enjoy priority of lien over the other notes hereinafter described and constituting a portion of said purchase price, and shall be paid by preference and priority over said notes out of the said property or its purchase price in case of its sale to enforce the said vendors' lien and mortgage.

2nd. The said purchaser has furnished to said vendors the two certain promissory notes of said corporation, one thereof for the sum of nine thousand three hundred and fifty-seven $\frac{47}{100}$ dollars ($9,357.47), and one thereof for the sum of four thousand eight hundred and eighty $\frac{15}{100}$ dollars ($4,880.15), both dated May 5th, 1892, both payable one year after date, and stipulating to bear interest at the rate of eight per cent. per annum from date until paid, and which notes, after having been paraphed "*Ne varietur*" by me, notary, to identify them with this act, have been delivered to the said vendors, who hereby acknowledge the receipt thereof; and the payment of said notes is secured by special mortgage and vendors' lien and privilege, as hereinafter set forth; but it is hereby specially agreed that the said two notes for four thousand eight hundred and eighty $\frac{15}{100}$ dollars ($4,880.15) and nine thousand three hundred and fifty-seven $\frac{47}{100}$ dollars ($9,357.47) shall be inferior in mortgage and lien to the hereinabove-described notes for fourteen hundred dollars ($1,400.00) each and for fifteen hundred and eighty-eight $\frac{47}{100}$ dollars ($1,588.47); and the said two notes for four thousand eight hundred and eighty $\frac{15}{100}$ dollars ($4,880.15) and nine thousand three hundred and fifty-seven $\frac{47}{100}$ dollars ($9,357.47) shall, in the event that it becomes necessary to enforce the vendors' lien and privilege and mortgage securing the same upon the said hereinabove-
12 described property, be paid only after said notes of fourteen hundred dollars ($1,400.00) each and fifteen hundred and eighty-eight $\frac{47}{100}$ dollars ($1,588.47) shall have been paid.

3rd. The said purchaser has furnished to the said vendors certificates of the capital stock of said Belmont Planting and Manufacturing Company of the par value of nineteen thousand two hundred dollars ($19,200.00), full paid and non-assessible, receipt for which said certificates is hereby acknowledged by said vendors. All of said notes are made by the purchaser to its own order and by it endorsed in blank.

The purchaser hereby binds itself to keep the sugar-house on the

above-described plantation constantly insured against loss by fire to the amount of five thousand dollars and to transfer such insurance to the present vendors or any other holder or holders of the above-described notes first in lien upon said plantation, said purchaser hereby authorizing said vendors or any future holder or holders of above-described notes to cause said insurance to be effected on its default.

And in case it should become necessary to institute suit for the recovery of the amount of said notes or any part thereof the said purchaser hereby binds and obligates itself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

And now, in order to secure the full and punctual payment of the said notes at maturity, together with all interest, costs, attorneys' fees, and premiums of insurance, special mortgage and vendors' lien and privilege are hereby retained and granted in favor of said vendors and of all future holder or holders of said notes on the
13 property herein conveyed, which the said purchaser binds itself not to sell, alienate, or in anywise incumber to the prejudice of this act, and the mortgage so granted to secure said premiums of insurance is hereby fixed at the sum of one thousand dollars ($1,000.00).

And here the said purchaser declares that it does by these presents consent, agree, and stipulate that in the event of said promissory notes not being punctually paid at their maturity it shall be lawful for and it does hereby authorize the said vendors or any other holder or holders thereof to cause all and singular the said hereinbefore described and herein conveyed and mortgaged property to be seized and sold without appraisement to the highest bidder, payable cash.

And the said Miss Elizabeth C. Le Bourgeois hereby authorizes and instructs the recorder of mortgages of the parish of St. James to erase and cancel upon his books any and all mortgages existing in her favor and against the said Louis S. Le Bourgeois, her father and tutor, in so far as the same affect or may appear to affect the said heinabove-described property.

All State and parish taxes up to and including the taxes due and exigible in 1891 are paid as per tax receipts hereto annexed.

Mortgage and conveyance certificates are waived, and I, notary, relieved from liability therefor.

Thus done and passed, in my office, at the city of New Orleans, on the day, month, and year herein first above written, in the presence of Messrs. E. B. Kruttschnitt and D. O'Day, competent witnesses, who hereunto sign their names with the said appearers and me, notary, after reading of the whole.

(Original signed) E. B. KRUTTSCHNITT.
D. O'DAY.
14 (Original signed) J. C. LE BOURGEOIS.
LOUIS LE BOURGEOIS.
ELIZABETH C. LE BOURGEOIS.
JOS. L. LE BOURGEOIS.
HEWES T. GURLEY, *Not. Pub.*

Certified Copy.

Registered in Conveyance Book *Book* "P," entry No. 466, fo. 733, and Mort. Book "U," folio 408, entry No. 162, parish of St. James. A true copy.

(Signed) HEWES T. GURLEY, *Not. Pub.*

Notice of Order of Seizure and Sale. Issued December 24, 1892.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

WILLIAM L. SCOTT
vs.
BELMONT PLANTING & M'F'G COMPANY. } No. 12160.

To the Belmont Planting and Manufacturing Co., thro't its proper officer, parish of St. James, Louisiana:

Take notice that payment is demanded of you, within three days from the service hereof, of the amount specified in the writ of seizure and sale granted on the accompanying copy of petition herein, with interest and costs, and in default of payment within that delay the property referred to in said petition will be seized and sold according to law.

A further delay of one day for every twenty miles distance from your domicil to this city, at which place this court is held, is allowed you by law.

Clerk's office, New Orleans, December 24, 1892.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Dec. 24, '92, and on the 29th day of December, 1892, I served copy of the within citation and accompanying petition on the Belmont Planting and Manufacturing Company by handing the same to Mr. Joseph L. Le Bourgeois, president thereof, in person, in New Orleans, La.

(Signed) J. B. DONNALLY,
U. S. Marshal,
By JAMES R. PINNIGRE, *D'y.*

Supplemental & Amended Petition. Filed Dec. 27, 1892.

United States Circuit Court, Eastern District of Louisiana.

16 WILLIAM L. SCOTT
vs.
BELMONT PLANTING AND MANUFACTURING CO. } No. 12160.

U. S. Circuit Court, Eastern District of La.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The supplemental and amended petition of William L. Scott, a resident and a citizen of the city of New York, State of New York—

Respectfully shows that he reaffirms and reiterates each and every allegation of the original petition on file herein.

That, in addition, he desires to allege and does now so allege that the said Belmont Planting and Manufacturing Co., defendant herein, is a citizen of the State of Louisiana.

Wherefore petitioner prays leave of the court to file this amended and supplemental petition; that the said Belmont Planting and Manufacturing Co. be notified, and thereafter for executory process, as prayed in the original petition, and for all general and equitable relief.

(Signed) HENRY P. DART, *Att'y.*

Order.

Let this supplemental and amended petition be filed, as prayed for.

Dec. 27, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Dec. 27, '92,
17 and on the 29th day of Dec., 1892, I served copy hereof on the Belmont Planting and Manufacturing Company by handing the same to Mr. Joseph L. Le Borgeois, president thereof, in person, in New Orleans, La.

J. B. DONNALLY,
U. S. Marshal,
By JAMES R. PINNIGRE, *D'y.*

Writ of Seizure and Sale. Issued Jan'y 5th, 1893.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

WILLIAM L. SCOTT
vs.
BELMONT PLANTING & M'F'G CO. } No. 12160.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to seize and take into your possession and advertise and sell, according to law, without appraisement, for cash, the following-described property, to wit:

A certain plantation known as the Belmont plantation, situated in the parish of St. James, in the State of Louisiana, on the left bank of the Mississippi river, at about fifty-seven miles above 18 the city of New Orleans, measuring twenty arpents front on said river by eighty arpents in depth, opening in the rear, more or less, together with a second and third concessions, and all the back lands attached to the Belmont plantation and forming part thereof and having an acreage of seventeen hundred and sixty superficial acres, said plantation being bounded above by the plantation of Mrs. Welham and below by that formerly belonging to S. T. Wallace, Jr., and now to McCan and Ross.

To pay and satisfy petitioner's claim of two thousand eight hundred dollars, with eight per cent. interest thereon from January 1st, 1892, and costs, with five per cent. attorney's fees on the whole amount thus sued on, and with recognition of petitioner's lien and privilege and right of preference over the other notes described in the act of mortgage herein, the same being the amount of the first of the series of the notes described in the petition herein, which are now past due, the purchaser to assume the payment of the remainder of the series of said notes, viz: two for the sum of fourteen hundred dollars each, due December 1, 1893; two for fourteen hundred dollars each, due December 1st, 1894, and two for the sum of fifteen hundred and eighty-eight $\frac{47}{100}$ dollars each, due December 1st, 1895, with the conditions stipulated in the act of sale and mortgage herein.

And what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, at the city of New Orleans, this 5th day of January, A. D. 1893.

(Signed) E. R. HUNT, *Clerk.*

19 *Marshal's Partial Return (Jan'y 7th, 1892).*

Received by U. S. marshal, New Orleans, La., Jan'y 6, '93, and on the same day, but subsequent to the execution of this writ, I received notice from the office of the clerk of the circuit court for the eastern district of Louisiana that an appeal had been granted the defendant herein on a writ of error to the Supreme Court of the United States on the first day of February, A. D. 1893.

Motion and Order for Appeal. Entered and Filed Jan'y 6, 1893.

U. S. Circuit Court, Eastern District of Louisiana.

WILLIAM L. SCOTT
vs.
THE BELMONT PLANTING AND MANUFACTURING COMPANY. } No. 12160.

On motion of Farrar, Jonas & Kruttschnitt, attorneys for the defendant, The Belmont Planting and Manufacturing Company, and on suggesting to the court that on the 24th day of December, 1892, an order was entered in this cause that executory process do issue; and on further suggesting to the court that said order is a final decree and defendant is aggrieved thereby in this, that this honorable court is and was without jurisdiction to render said order, and that defendant is entitled to an appeal therefrom to the honorable Supreme Court of the United States; and on further suggesting to the court the assignment of errors hereto annexed and made part hereof—

20 It is ordered that said Belmont Planting and Manufacturing Company be allowed an appeal from said decree, ordering the issue of executory process, said appeal to operate as a supersedeas and to be to the Supreme Court of the United States and to be returnable thereto on the first day of February, 1893, on defendant's giving bond, with good and sufficient security, as provided by law, in the sum of one thousand dollars.

Entered in open court this sixth day of January, 1893.

(Signed) EDWARD C. BILLINGS, *Judge.*

Assignment of Errors Made Part of Motion and Order of Appeal. Filed Jan'y 6, 1893.

U. S. Circuit Court, Eastern District of Louisiana.

WILLIAM L. SCOTT
vs.
THE BELMONT PLANTING AND MANUFACTURING COMPANY. } No. 12160.

Assignment of errors made part of motion and order of appeal.

Now comes The Belmont Planting and Manufacturing Company, defendant in the above-entitled cause and appellant from the final

decree ordering the issue of executory process herein, and makes and files as part of its motion for an appeal this assignment of errors in the said order and decree:

That it does not appear from the face of the petition and
21 certified copies of act of sale and mortgage thereto annexed that the said honorable circuit court of the United States had any jurisdiction to grant said order, but that it, on the contrary appears from the face of the said petition and said certified copies of notarial acts of sale and mortgage thereto annexed that said honorable circuit court of the United States did not have jurisdiction to grant said order and decree, and upon this assignment of errors appellant prays the judgment of the honorable the Supreme Court of the United States, and that said decree and order for executory process be annulled, avoided, and reversed.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Solicitors for Defendant and Appellant.

Bond for Appeal. Filed Jan'y 6, 1893.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Belmont Planting and Manufacturing Company, as principal, and John M. Baldwin, as surety, are held and firmly bound, jointly and severally, unto William L. Scott in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said William L. Scott, his executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 6th day of January, in the year of our Lord eighteen hundred and ninety-three.

22 Whereas the said Belmont Planting & Manufacturing Company having heretofore, to wit, on the 6 day of January, 1892, taken an appeal to the Supreme Court of the United States from and to reverse the order and decree rendered on the 24th day of December, 1893, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of William L. Scott *vs.* Belmont Planting and Manufacturing Company, No. 12160 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Belmont Planting and Manufacturing Company shall prosecute its said appeal to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) BELMONT PLANTING & MANUFACTURING COMPANY,
By E. B. KRUTTSCHNITT,
Its Attorney. [L. S.]
JNO. M. BALDWIN. [L. S.]

Bond and sufficiency of the surety approved.

(Signed) EDWARD C. BILLINGS, *Judge.*

Jan'y 6, 1893.

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Personally appeared John M. Baldwin, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides at New Orleans, Louisiana, and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) JNO. M. BALDWIN.

Subscribed and sworn before me this 6th day of January, 1893.

(Signed) H. J. CARTER,
Commissioner U. S. Circuit Court, District of Louisiana.

23 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 22 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the case of William L. Scott *vs.* The Belmont Planting & Manufacturing Co., No. 12160 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 9th day of January, A. D. 1893.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 9th day of January, A. D. 1893.

EDWARD C. BILLINGS, *Judge.*

Endorsed on cover: Case No. 15,249. E. Louisiana C. C. U. S. Term No., 1279. The Belmont Planting & Manufacturing Company, appellant, *vs.* William L. Scott. Filed February 1, 1893.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1892.

No. 1279.

THE BELMONT PLANTING AND MANUFACTURING CO., APPELLANT,

versus

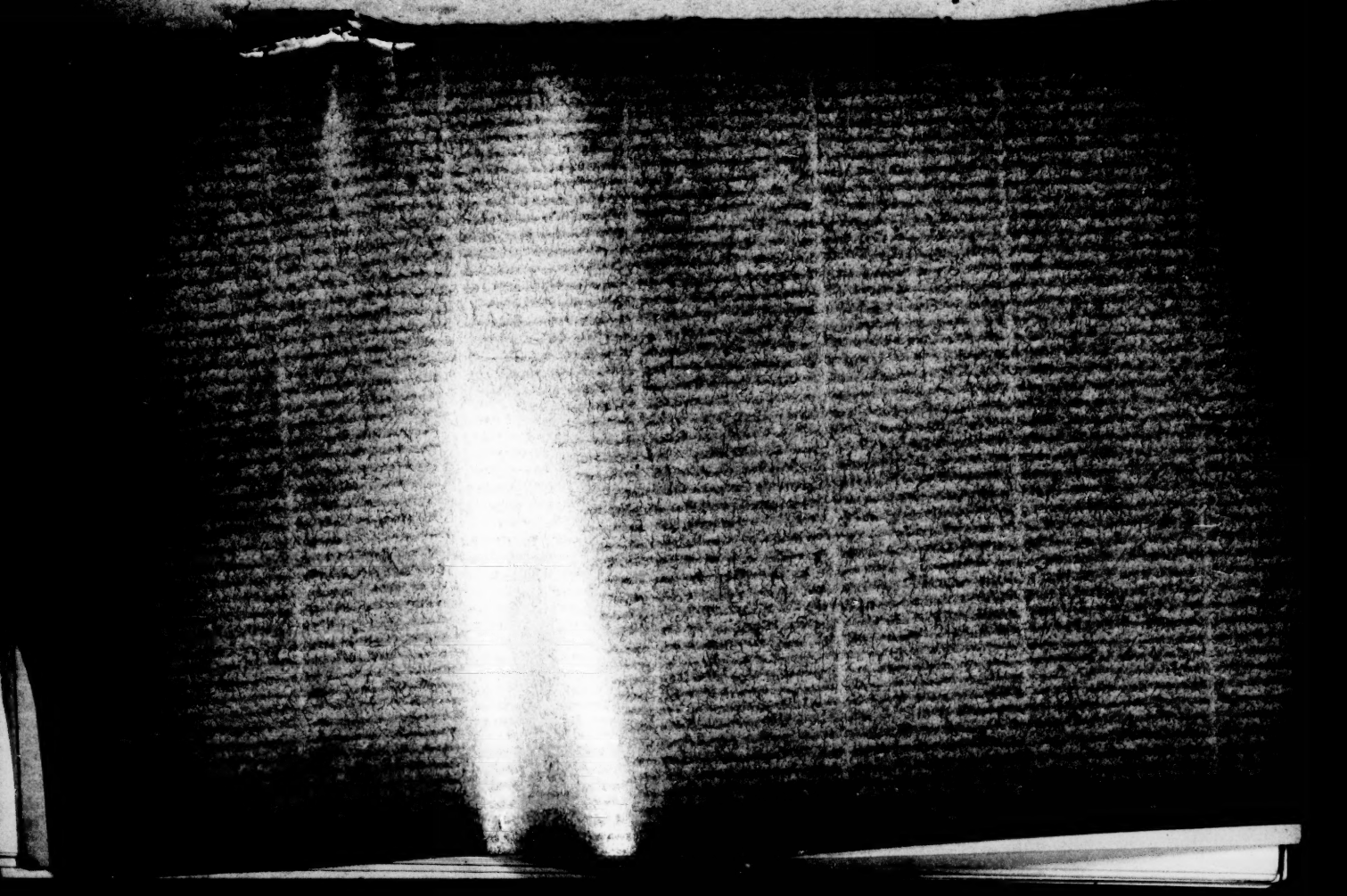
WILLIAM L. SCOTT.

Appeal from Circuit Court of the United States for Eastern District of Louisiana.

BRIEF ON BEHALF OF DEFENDANT AND APPELLANT.

HENRY P. DART,

Solicitor.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 1279.

THE BELMONT PLANTING AND MAUFACTURING CO., APPELLANT,

versus

WILLIAM L. SCOTT.

Appeal from Circuit Court of the United States for Eastern District of Louisiana.

BRIEF ON BEHALF OF DEFENDANT AND APPELLEE.

William L. Scott proceeded in the Circuit Court of the United States for the Eastern District of Louisiana by petition to foreclose upon the mortgage bearing upon real property in St. James Parish, State of Louisiana, securing two notes amounting to twenty-eight hundred dollars, which notes were given in part payment of the price of said property.

In his petition Scott avers himself a resident and a citizen of the State of New York, and he alleges that the defendant is "The Belmont Planting and Manufacturing Company, a corporation organized under the laws of Louisiana, duly incorporated by act before H. T. Gurley, Notary Public, on December 9th, 1890, domiciled in the Parish of St. James, State of Louisiana." (Rec. p. 1).

An order for executory process issued (Rec. p. 3), and thereafter this appeal was prosecuted by said Planting Company (Rec. p. 12), accompanied by an assignment of errors declaring "that it does not appear from the face of the petition and certified copies of act of sale and mortgage thereto annexed, that the said Honorable Circuit Court of the United States had any jurisdiction to grant said order, but that it, on the contrary, appears from the face of said petition, etc., that said Court did not have jurisdiction to grant the same." (Rec. pp. 12, 13).

The case has been advanced in this Court under Rule Thirty-two, as amended.

It is too well settled to admit of further controversy that the allegation of citizenship is sufficient as made. It appears from the petition that the plaintiff is a citizen of New York and the defendant a citizen of Louisiana, *i. e.* a corporation organized under the laws

of that State and domiciliated within its border. R. R. Co. vs. Harris, 12 Wall. 65; Muller vs. Dows, 94 U. S. 444; Ex parte Schollenberger, 96 U. S. 369; Penn. Co. vs. R. R. Co., 118 U. S. 290; Goodlet vs. R. R. Co., 122 U. S. 391.

The appeal is absolutely without merit, and has been clearly taken for delay, and defendant in appeal considers that damages ought to be awarded. It is true the note proceeded upon bears interest, but the defendant in appeal obviously has been compelled to incur additional expense in counsel fees, etc., and there being no merit whatsoever and no question submitted to your Honors, damages ought to be awarded.

Respectfully submitted,

HENRY P. DART,

Attorney.